

# Contract User Guide for ITS63

## ITS63StaffAugCat2a/Cat2b: How to Use the IT Staff Augmentation Lower Overhead Contracts

UPDATED: 04/25/2018

<b>Contract #:</b>	ITS63StaffAugCat2a (vendor hires resource), ITS63StaffAugCat2b (vendor subcontracts with resource employer)
<b>MMARS MA #:</b>	ITS63StaffAugCat2a * and ITS63StaffAugCat2b*
<b>Initial Contract Term:</b>	07/01/2016 to 06/30/2021
<b>Maximum End Date:</b>	No renewal options available
<b>Current Contract Term:</b>	07/01/2016 -06/30/2021
<b>Contract Manager:</b>	Marge MacEvitt, (617) 720-3121, <a href="mailto:marge.macevitt@state.ma.us">marge.macevitt@state.ma.us</a>
<b>This Contract Contains:</b>	MBE/MWBE/WBE

\*The asterisk is required when referencing the contract in the Massachusetts Management Accounting Reporting System (MMARS).

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### Contract Summary

This User Guide covers two Statewide Contracts for IT Staff Augmentation services where the Commonwealth Agency has independently located an individual ("Resource") they wish to retain, without reliance on other Statewide Contracts. Category 2a is used when the Resource has no employer. The Category 2a vendor will hire the Resource as their employee. Category 2b is used when the Resource already has an employer. In that case, the Category 2b vendor will subcontract with the Resource's employer. All Resources retained under this contract must have an employer.



If your Agency has not located a Resource, use ITS63StaffAugCat1, the “full service” contract, or ITS63StaffAugCat3, the Niche contract. Those vendors will review your Agency’s requirements for a Resource, and submit resumes for your review and selection.

*UPDATES:*

**November 24, 2017 - Reminder and Clarifications:**

This is a reminder to contract users ("Commonwealth Entities") and vendors about the rules for the use of the IT Staff Augmentation contracts.

Category 1 (Full Service) or Category 3 (Niche) vs Category 2 (Lower Overhead)

If a Commonwealth Entity has located a Resource without input from a Category 1 or Category 3 vendor, the Commonwealth Entity may use Category 2. Category 2 may not be used under any other circumstances. In this case, the position should not be posted.

Commonwealth Entities should be aware that failure to follow OSD's directions for use of a Statewide Contract may result in an audit exception if the Commonwealth Entity's procurement practices are reviewed by OSD's Compliance Unit.

IT Staff Augmentation vendors, please note that a verified violation of the above will result in suspension of new business for a period of six months or longer.

**September 9, 2017 - RATE CARD 6 has been posted**, replacing Rate Card 5 for Executive Department Users. Non-Executive entities may use Rate Card 6 or Rate Card 3; Executive Departments must use Rate Card 6 for new postings. The new Rate Card has been created to better reflect industry standards, dropping some titles that have not been used for many years, as well as some rate adjustments.

**Benefits and Cost Savings**

Statewide contracts are an easy way to obtain benefits for your organization by leveraging the Commonwealth’s buying power, solicitation process, contracting expertise, vendor management and oversight, and the availability of environmentally preferable products.

- Markups for both Contracts are low because bids were primarily evaluated based on markup, and there were more than forty vendors competing for three awards in each Category.

**Find Bid/Contract Documents**

To find all contract documents, including this Contract User Guide, RFR, specifications, rate calculator, statement of work, sick leave policy, and others visit [COMMBUYS.com](http://COMMBUYS.com) and search for



ITS63StaffAugCat2. All six records have the same identical set of contract documents in a .zip file. Direct links to the Contracts are available [here](#).

## Who Can Use This Contract

### Applicable Procurement Law

Executive Branch Goods and Services: MGL c. 7, § 22; c. 30, § 51, § 52; 801 CMR 21.00;

### Eligible Entities

Please see the standard list of Eligible Entities on our [Who Can Use Statewide Contracts](#) webpage.

## Subcontractors

The awarded vendor's use of subcontractors is subject to the provisions of the Commonwealth's Terms and Conditions and Standard Contract Form, as well as other applicable terms of this Statewide Contract.

## Pricing, Quote and Purchase Options

### Purchase Options

Services will be obtained on a time and materials basis only. Travel may be paid only with your prior written consent.

### Pricing and Acquisition Methods

A "Rate Card," updated periodically, determines the maximum rates that Commonwealth Agencies can pay for particular job titles. Rate Card 6 applies to Executive Department agencies. All other Commonwealth Agencies may use Rate Card 3 or Rate Card 6.

If you cannot negotiate a rate within the Rate Card rates, you may ask Ellen Wright ([ellen.wright@state.ma.us](mailto:ellen.wright@state.ma.us)), the designee of the Commonwealth's Chief Information Officer, for a variance from the Rate Card.

The "bill rate" (what your Agency pays the ITS63 Vendor) for Category 2a is equal to the Resource's "pay rate" plus the ITS63 Vendor's charges. For Category 2b, the bill rate is the rate paid to the Resource's employer plus the ITS63 vendor's charges (under Category 2b, you won't necessarily know the Resource's ultimate pay rate, because the ITS63 vendor is subcontracting with the Resource's employer).



The usual practice is to negotiate a rate with the Resource and allow the Resource to choose the ITS63 Vendor they will work with, because the ITS63 Vendors' practices differ (payment scheduling, insurance provisions, etc.). You can do this in one of two ways:

- **Negotiate a “pay rate” with the Resource**

In this case, the bill rate to your Agency may be different depending on which ITS63 Vendor your Resource selects. Therefore you must be sure that if your Resource chooses the ITS63 vendor with the highest markup, the rate your Agency pays will be a) under the Rate Card maximum and b) within your budget. (Remember that for Category 2b, this is the pay rate to your Resource's employer.)

**OR**

- **Negotiate a “bill rate” with the Resource**

This is the amount your Agency will pay regardless of which ITS63 vendor the Resource chooses. The Resource will have a higher pay rate if they choose the ITS63 vendor with the lowest markup.

### Product/Service Pricing

There is a spreadsheet on the COMMBUYS contract that does the calculations shown below for you (see [Find Bid/Contract Documents](#)).

#### 1. Pay rate and bill rate calculations for Category 2a

Category 2a (ITS63 Vendor hires the Resource as their employee)

Vendor Name	Max Markup
M & R Consultants Corporation	12.00%
McInnis Consulting Services Inc.	12.99%
Modis	14.50%

These rates are higher than for Category 2b because the “markup” includes all the Employer taxes and other charges that the ITS63 Vendor must pay, typically at least 11% and often higher.

**To calculate Resource's Pay Rate based on the Bill Rate to your Agency:**

$$\text{Pay Rate} = \text{Bill Rate} / (1 + \text{Markup})$$

**To calculate Bill Rate to your Agency based on the Resource's Pay Rate:**

$$\text{Bill Rate} = \text{Pay Rate} * (1 + \text{Markup})$$



## 2. Pay rate and bill rate calculations for Category 2b

Category 2b (ITS63 Vendor subcontract's with the Resource's employer)

Vendor	Hourly Markup
Modis	\$0.42
Overture Partners LLC	\$0.50
McInnis Consulting Services Inc.	\$0.54

*To calculate Pay Rate to Resource's employer based on the Bill Rate to your Agency:*

Pay Rate = Bill Rate – (Markup + (Bill Rate \* .01))

*To calculate Bill Rate to your Agency based on the Pay Rate to the Resource's employer:*

Bill Rate = Pay Rate + Markup + ((Pay Rate + Markup) \* .01)

### Setting Up a COMMBUYS Account

COMMBUYS is the Commonwealth's electronic Market Center supporting online commerce between government purchasers and businesses. If you do not have one already, contact the COMMBUYS Help Desk to set up a COMMBUYS buyer account for your organization: (888)-627-8283 or [COMMBUYS@state.ma.us](mailto:COMMBUYS@state.ma.us).

When contacting a vendor on statewide contract, always reference ITS63 to receive contract pricing.

### Submitting a Requisition through COMMBUYS

Go to the [Job Aids for Buyers](#) webpage, select the *Purchase Orders* section, and choose the *How to Create a Release Requisition and Purchase Order (Contract Purchase)* job aid. The following instructions customize that Job Aid. (Note: these instructions are not complete; they must be used in conjunction with the Job Aid.)

General tab (Job Aid Step 4)

If consistent with how your Department is handling the "Short description" field, please include ITS63StaffAugCat2a or ITS63StaffAugCat2b somewhere in the "Short description."

Items tab (instructions below replace all instructions in Job Aids Steps 6 through 10)

- Do not use the key word search – open the Advanced Search function by clicking on the plus sign (+) by the Advanced Search Criteria title.
- Enter "ITS63StaffAugCat2a" or "ITS63StaffAugCat2b" (no quotes) in the **Description** field, and the name of the vendor in the **Vendor Name** field, and select **Find It**.



- Only one record will appear. Check the box under Select, enter the maximum number of hours in the **Quantity** field, and select **Save & Exit**.
- Ignore the error message in red.
- Select the **Enter Info** link, and enter the **Catalog/Unit Price Cost** (the hourly rate)
- Select **Save & Continue**

Continue with Job Aid Step 11.

Attachments Tab (Job Aid Step 12)

This is where you will attach the Statement of Work (SOW). Be sure to include the Statewide Contract Number ITS63StaffAugCat2a or ITS63StaffAugCat2b on the SOW.

Continue with remaining steps.

### How to Use this Contract

There are five steps for obtaining IT Resources under this Contract:

1. Recruit candidate and negotiate rate (see above to negotiate a [bill rate](#) or [pay rate](#)).
2. Give your Resource contact information for the appropriate contract (2a if the Resource will be hired by the ITS63 vendor, 2b if the ITS63 vendor will subcontract with the Resource's employer).
3. Sign an agreement with the ITS63 vendor. A Statement of Work (SOW) template is posted on COMMBUYS (see [Find Bid/Contract Documents](#)). You may use your own Agency's agreement, but be sure to cover all elements of the SOW template, and to include the name of the Contract (ITS63StaffAugCat2a or ITS63StaffAugCat2b).
4. Submit a requisition through COMMBUYS (See [Submitting a Requisition through COMMBUYS](#)).
5. "On-board" the Resource (see below)

**I-9 Form:** You may request copies of the I-9 (Employment Eligibility Verification) form from the ITS63 Vendor prior to the Resource's first day of work. If you do, review the area of the form on the right hand side of the page, about one third of the way down, beginning: "I attest, under penalty of perjury..." If the box for "An alien authorized to work..." is checked, be sure that the authorization is current based on the expiration date.

**Resources with H1-B Visas:** The Department of Labor requires (20 CFR 655.734) the filing of a labor condition application (LCA) and a posting of a notice of the LCA filing for Resources with H1-B visas. The requirement can be met by Commonwealth Agencies by posting a copy of the notice, which the ITS63 Vendor will supply, at the Resource's work site, in two conspicuous locations, for a period of ten days.

**Representations by Resources Form:** This form, found on COMMBUYS (see [Find Bid/Contract Documents](#)), must be signed by the Resource on or before their first day of work.



**ITS63 Employee Certification Form:** The Resource must bring this form to work on his/her first day (if not submitted previously). The form must be kept in the procurement file. A copy of the form is posted on COMMBUYS (see [Find Bid/Contract Documents](#)).

The “Resource Employer” on the ITS63 Employee Certification Form will be the same as the ITS63 Vendor for Category 2a, but will be a different company for Category 2b. Review the form to ensure that the Resource is eligible to provide services under ITS63. The form indicates how questions must be answered for a Resource to be eligible.

#### During the Resource’s Engagement

**Request a redacted copy of the W-2** for each Resource working at your Agency, on or about May 1<sup>st</sup> of each year, and keep it in the procurement file. If the vendor cannot provide a W-2, you may accept any documentation showing that the Resource is a W-2 employee of some company/organization.

#### Category 2a only - MA Law Regarding Paid Sick Leave for Employees

Chapter 149 Section 148 C (M.G.L. c. 149, § 148C), effective July 1, 2015, requires that all employers with eleven employees or more offer paid sick time to their employees. One hour of sick time is accrued for every 30 hours of work. Employees began to accrue sick leave as of July 1, 2015. No more than 40 hours of paid sick leave may be taken during a calendar year. The text of M.G.L. c. 149, § 148C appears as an attachment in the Attachments section of this contract on COMMBUYS.

Under ITS63/ITS53 (hereinafter, ITSx3), Staff Augmentation Category 2a, where the ITSx3 vendor is the Resource employer, the vendors bid a fixed percentage over the amount paid to the Resource. In the ITS63 RFR, Bidders were asked to bid two different percentage markups: 1) if sick leave hours were compensated by the Vendor, and 2) if they were covered by the Commonwealth Contract User.

Based on the bid responses, it would be more expensive for the Commonwealth if sick leave hours were compensated by the vendor. That is, the average markup rate bid by the vendors if they had to compensate the Resources for sick leave hours was more than what the Commonwealth Contract User would pay even if the Resources used the entire 40 hours of sick leave over the course of a year. Therefore, the Strategic Sourcing Team, which includes representation from the largest users of the contract, elected to accept the percentage markup application where the Commonwealth Contract User compensates the ITSx3 vendor for hours taken by the Resource as sick leave.





During any billing period for which leave is taken pursuant to the provisions of M.G.L. c. 149, § 148C for the hours or portions thereof for which the employee is paid under ITSx3 Staff Aug Cat2a, the ITSx3 vendor will:

- a. Invoice the hours worked as usual.
- b. Invoice hours for which the employee was compensated pursuant to the provisions of M.G.L. c. 149, § 148C on an additional invoice line, characterized as “Compensation to Vendor pursuant to M.G.L. c. 149, § 148C.”
- c. Relative to Chapter 149 Section 148 C Subsection e, the ITSx3 vendor will not invoice the Commonwealth Agency for which the Resource is providing services for any hours worked outside of the normally agreed work schedule unless the Commonwealth Agency has agreed in writing in advance that such hours may be invoiced.
- d. If notified by the employee in advance of the need to use earned sick time, pursuant to Chapter 149 Section 148 C Subsection g, the ITSx3 Vendor will provide written notification (email acceptable) as quickly as possible to the Commonwealth Agency for which the Resource is providing services.

Re: Item c above, Chapter 149 Section 148 C Subsection e provides that if, “by mutual consent of the employer and the employee, the employee works an equivalent number of additional hours or shifts during the same or the next pay period as the hours or shifts not worked due to reasons listed in subsection (c), an employee shall not be required to use accrued earned sick time for the employee’s absence during that time period and the employer shall not be required to pay for the time the employee was so absent.” That is, in effect, the employee may be allowed, by mutual agreement with the ITSx3 Vendor, to “make up” hours used as sick leave, rather than be paid for those hours, during the same or next pay period. Item c above provides that the Commonwealth Agency will not pay for such hours unless authorized in advance. That is, although “making up” hours is by the mutual consent of the ITSx3 vendor and the Resource, the Commonwealth Agency is not obligated to pay for such hours without advance authorization.

Commonwealth Agencies must bear in mind that the ITSx3 Vendor is the Resource employer, NOT the Commonwealth Agency. For example, Chapter 149 Section 148 C Subsection f provides that “...an employer may require certification when an earned sick time period covers more than 24 consecutively scheduled work hours...” The Commonwealth Agency may NOT require this of the Resource. Similarly, the Commonwealth Agency MAY NOT encourage the Resource to make up sick leave hours pursuant to item c above rather than taking them as paid sick leave, nor discourage the





Resource from doing so. The Commonwealth's only choice is whether or not they will authorize the ITSx3 vendor to pay for hours worked outside of the Resource's normally scheduled hours pursuant to item c above.

**Please note, compensating ITS63 Category 2a vendors for expenses involved in complying with this law is not optional for Contract Users. Failure to pay invoice lines labelled "Compensation to Vendor pursuant to Chapter 149 Section 148 C and D" is the same as failure to pay any other obligation incurred by the Commonwealth.**

#### Instructions for MMARS Users

MMARS users must reference the MA number in the proper field in MMARS when placing orders with any contractor.

#### Contract Exclusions and Related Statewide Contracts

See ITS63StaffAugCat1 or ITS63StaffAugCat3 if you have not located a Resource on your own, and wish to have resumes submitted based on specifications you provide.

#### Additional Information/FAQs

##### Additional Caveats and Benefits

- Under Category 2a (ITS63 Vendor is Resource's employer), **you may offer the Resource a position with your Agency** as a regular employee or a "Contract Employee," at any time. However, you **may not** encourage the Resource to leave their ITS63 employer and go to work for another company, such as a different "Low Overhead" vendor or other third party.
- Under Category 2b (ITS63 Vendor subcontracts with the Resource's employer), **you may offer the Resource a position with your Agency** as a regular employee or a "Contract Employee" after they have been working continuously for your Agency for six months or more, provided that they are not here on an H1B visa. As above, you **may not** encourage the Resource to leave their ITS63 employer and go to work for another company.
- Vendors are **not obliged to conduct background checks** under the Lower Overhead contracts. If background checks are required, your Agency must conduct them.
- Under Category 2b, you have the right to request and receive a **copy of the subcontract**.
- **Do not** post a job on Monster.com or other job boards until you have given the ITS63 Full Service Vendors an opportunity to find a candidate for you. Above all, do not post the position elsewhere while it is posted for responses from the ITS63 vendors.

##### Continuing a Resource's Engagement after the end of ITS63

Before the end of the Contract (7/1/2021), you may extend the term of your Agreement for a Resource or group of Resources for up to three years from the date you sign the extension. After



ITS63 ends, the end date of your Agreement cannot be extended further, and the bill rate cannot be increased. As always, you may end the engagement before the termination date of your Agreement. No new Agreements may be executed after ITS63 has expired.

Contract termination or suspension of a Vendor from new business under ITS63 does not automatically terminate any Agreements you have in place with that Vendor.

### **Other Discounts**

All Category 2a vendors offer a 1% Prompt Payment discount for payment within 15 days; all Category 2b vendors offer a .25% (1/4 of 1%) for payments within 15 days. The discount will be applied in cases where the payment issue date is within the specified number of days listed by vendor and in accordance with the Commonwealth's Bill Paying Policy. Payment days will be measured from the date goods are received and accepted / performance was completed OR the date an invoice is received by the Commonwealth, whichever is later to the date the payment is issued as an EFT (preferred method) or mailed by the State Treasurer. The date of payment "issue" is the date a payment is considered "paid" not the date a payment is "received" by a Contractor.

### **Performance and Payment Time Frames Which Exceed Contract Duration**

All agreements for services entered into during the duration of this Contract and whose performance and payment time frames extend past 6/30/2021 (the Contract end date) shall remain in effect for performance and payment purposes only, limited to the time frame and services established per each written agreement. No written agreement shall extend more than 3 years beyond 6/30/2021. No new agreements may be executed after the Contract has expired.

### **Memorandum of Understanding/Statement of Work**

A template Statement of Work (SOW) is available on COMMBUYS (see [Find Bid/Contract Documents](#)). Use of this template is not required, however, if you use a different SOW, be sure to include the Statewide Contract Number ITS63StaffAugCat2a or ITS63StaffAugCat2b on the SOW.

# Contract User Guide for ITS63

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## Strategic Sourcing Team Members

- Alison Cahill, Executive Office of Labor and Workforce Development
- Brian Boyd, Executive Office of Labor and Workforce Development
- Charles Caron, Department of Public Health
- Eddie Pinkerton, City of Boston
- Edith Kwok, Department of Education
- Ellen Wright, MassIT (Information Technology)
- John Cadorette, Mass DOT (Department of Transportation)
- Kara Banderier, Executive Office of Human Services
- Rachelle Hersey, Executive Office of Administration and Finance
- Rose Romagna, Executive Office of Human Services
- Tim Kennedy, Operational Services Division



### Vendor List and Information

PPD: All Category 2a vendors offer a 1% Prompt Payment discount for payment within 15 days; all Category 2b vendors offer a .25% (1/4 of 1%) for payments within 15 days.

Vendor	Master Blanket Purchase Order #	MMARS Vendor Code and Vendor Line	Contact Person	Phone #	Email	Cate-gories	PPD See above	MBE MWBE WBE
M & R Consultants Corporation	<a href="#"><u>PO-17-1080-OSD03-SRC01-00000008008</u></a>	VC6000182 570, 1	Subash Chitoor	(781) 273- 5050 ext. 1234	subash@mrccsolutions.com	2a only		
McInnis Consulting Services Inc.	<a href="#"><u>PO-17-1080-OSD03-SRC01-00000008005</u></a> , <a href="#"><u>PO-17-1080-OSD03-SRC01-00000008012</u></a>	VC6000188 527, 1	Bob McInnis	(781) 659- 4922	rm@mcinnisconsulting.com	2a and 2b		
Modis	<a href="#"><u>PO-17-1080-OSD03-SRC01-00000008011</u></a> , <a href="#"><u>PO-17-1080-OSD03-SRC01-00000008009</u></a>	VC6000261 247, 3	Justin Dyer	(781) 262- 5007	Justin.dyer@modis.com	2a and 2b		
Overture Partners LLC	<a href="#"><u>PO-17-1080-OSD03-SRC01-00000008014</u></a>	VC6000190 013, 2	Paul Chamberlain	(617) 614- 9600	pchamberlain@overturepartner.com	2b only		WBE

\*Note that the vendor record on COMMBUYS is the official system of record for vendor contact information.